

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

DANIEL JEROME BOWEN,

Plaintiff,

v.

E. SULLIVAN, M.D., PCP; E.
GOLDEN, R.N.; V. BROWN, SRN
II; M. SEPULVEDA, M.D., CME;
GERALD ELLIS, CEO, Salinas
Valley State Prison; and L. D.
ZAMORA, Chief, California Prison
Health Services,

Defendants.

No. C 11-6285 PJH (PR)

**ORDER OF PARTIAL
DISMISSAL AND FOR
SERVICE**

This is a civil rights case brought pro se by a state prisoner housed at Salinas Valley State Prison. The court determined in its initial review order that plaintiff had failed to state a claim against defendants Sullivan, Golden, Brown, and Sepulveda, and had stated a claim against Ellis and Zamora. The complaint was dismissed with leave to amend. Plaintiff has amended.

In his amendment, plaintiff does not name Sullivan, Golden, and Brown as defendants. They therefore are no longer defendants in the case. See *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir.1992) (defendants not named in an amended complaint are no longer defendants). Plaintiff has provided additional information regarding Sepulveda sufficient to state a claim against him. The case therefore may proceed against Sepulveda, Ellis, and Zamora.

CONCLUSION

1. Defendants Sullivan, Golden, and Brown are **DISMISSED** from the case.

1 2. The clerk shall issue summons and the United States Marshal shall serve,
2 without prepayment of fees, copies of the complaint with attachments and copies of this
3 order on the following defendants: M. Sepulveda, M.D., CME, and Gerald Ellis, CEO, both
4 at Salinas Valley State Prison; and L. D. Zamora, Chief, California Prison Health Services,
5 Sacramento.

6 3. In order to expedite the resolution of this case, the court orders as follows:

7 a. No later than sixty days from the date of service, defendants shall file a
8 motion for summary judgment or other dispositive motion. The motion shall be supported
9 by adequate factual documentation and shall conform in all respects to Federal Rule of
10 Civil Procedure 56, and shall include as exhibits all records and incident reports stemming
11 from the events at issue. If defendants are of the opinion that this case cannot be resolved
12 by summary judgment, they shall so inform the court prior to the date their summary
13 judgment motion is due. All papers filed with the court shall be promptly served on the
14 plaintiff.

15 b. At the time the dispositive motion is served, defendants shall also serve,
16 on a separate paper, the appropriate notice or notices required by *Rand v. Rowland*, 154
17 F.3d 952, 953-954 (9th Cir. 1998) (en banc), and *Wyatt v. Terhune*, 315 F.3d 1108, 1120 n.
18 4 (9th Cir. 2003). See *Woods v. Carey*, 684 F.3d 934, 939 (9th Cir. 2012) (*Rand* and *Wyatt*
19 notices must be given at the time motion for summary judgment or motion to dismiss for
20 nonexhaustion is filed, not earlier); *Rand* at 960 (separate paper requirement).

21 c. Plaintiff's opposition to the dispositive motion, if any, shall be filed with the
22 court and served upon defendants no later than twenty-eight days from the date the motion
23 was served upon him. Plaintiff must read the attached page headed "NOTICE --
24 WARNING," which is provided to him pursuant to *Rand v. Rowland*, 154 F.3d 952, 953-954
25 (9th Cir. 1998) (en banc), and *Klinge v. Eikenberry*, 849 F.2d 409, 411-12 (9th Cir. 1988).

26 If defendants file an unenumerated motion to dismiss claiming that plaintiff failed to
27 exhaust his available administrative remedies as required by 42 U.S.C. § 1997e(a), plaintiff
28 should take note of the attached page headed "NOTICE -- WARNING (EXHAUSTION),"

1 which is provided to him as required by *Wyatt v. Terhune*, 315 F.3d 1108, 1120 n. 4 (9th
2 Cir. 2003).

3 d. If defendants wish to file a reply brief, they shall do so no later than
4 fourteen days after the opposition is served upon them.

5 e. The motion shall be deemed submitted as of the date the reply brief is
6 due. No hearing will be held on the motion unless the court so orders at a later date.

7 4. All communications by plaintiff with the court must be served on defendants, or
8 defendants' counsel once counsel has been designated, by mailing a true copy of the
9 document to defendants or defendants' counsel.

10 5. It is plaintiff's responsibility to prosecute this case. Plaintiff must keep the court
11 informed of any change of address by filing a separate paper with the clerk headed "Notice
12 of Change of Address." He also must comply with the court's orders in a timely fashion.
13 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to
14 Federal Rule of Civil Procedure 41(b).

15 **IT IS SO ORDERED.**

16 Dated: November 5, 2012.



PHYLLIS J. HAMILTON
United States District Judge

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NOTICE -- WARNING (SUMMARY JUDGMENT)

If defendants move for summary judgment, they are seeking to have your case dismissed. A motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure will, if granted, end your case.

Rule 56 tells you what you must do in order to oppose a motion for summary judgment. Generally, summary judgment must be granted when there is no genuine issue of material fact--that is, if there is no real dispute about any fact that would affect the result of your case, the party who asked for summary judgment is entitled to judgment as a matter of law, which will end your case. When a party you are suing makes a motion for summary judgment that is properly supported by declarations (or other sworn testimony), you cannot simply rely on what your complaint says. Instead, you must set out specific facts in declarations, depositions, answers to interrogatories, or authenticated documents, as provided in Rule 56(e), that contradict the facts shown in the defendant's declarations and documents and show that there is a genuine issue of material fact for trial. If you do not submit your own evidence in opposition, summary judgment, if appropriate, may be entered against you. If summary judgment is granted, your case will be dismissed and there will be no trial.

NOTICE -- WARNING (EXHAUSTION)

If defendants file an unenumerated motion to dismiss for failure to exhaust, they are seeking to have your case dismissed. If the motion is granted it will end your case.

You have the right to present any evidence you may have which tends to show that you did exhaust your administrative remedies. Such evidence may be in the form of declarations (statements signed under penalty of perjury) or authenticated documents, that is, documents accompanied by a declaration showing where they came from and why they are authentic, or other sworn papers, such as answers to interrogatories or depositions.

If defendants file a motion to dismiss and it is granted, your case will be dismissed and there will be no trial.